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APPLICATION OF

HENRY COUNTY POWER, LLC

CASE NO. PUE010300

**For a certificate of public convenience and
necessity for electric generation facilities
in Henry County, Virginia**

**HEARING EXAMINER'S PROTECTIVE RULING FOR
ADDITIONAL PROTECTIVE TREATMENT**

August 13, 2001

On August 2, 2001, Henry County Power, LLC ("Henry County Power"), by counsel, submitted responses to the First Set of Discovery, stating that responses were being submitted in a public version from which certain information has been redacted and filed separately under seal as competitively sensitive information. Simultaneously, Henry County Power filed a motion requesting additional protective treatment for the information that was redacted as competitively sensitive information (collectively, "August 2, 2001 Redactions"). In support of that motion, Henry County Power states that the information for which additional protection is sought is as follows:

Response to No. 13:	Henry County Power Term Sheet containing terms and conditions for negotiation with possible counterparties for tolling agreement for the Henry County Project
Response to No. 15:	Counterparty for tolling agreement that has not yet been made public for Cogentrix generation project in Sterlington, LA
Response to No. 16:	List of possible tolling counterparties for the Henry County Power Project

Upon consideration of Henry County Power's request, I am of the opinion, and so find, that additional protected treatment is warranted for the August 2, 2001 Redactions in this case. Accordingly,

IT IS DIRECTED that the August 2, 2001 Redactions shall be produced, examined, and used only in accordance with the following conditions:

(1) For purposes of responding to interrogatories or data requests propounded by Parties in this proceeding, the production and handling of the August 2, 2001 Redactions shall be governed by the terms of an appropriate nondisclosure agreement between the producing party and the other party seeking access. While the Staff is bound by the terms of this Ruling, it is not required to execute a nondisclosure agreement in order to gain access to the August 2, 2001 Redactions.

(2) The August 2, 2001 Redactions need not be made available to entities that sell electricity (capacity or energy) on the open market in retail or wholesale transactions ("Electricity Marketers"). If a party has divisions or affiliated companies that are Electricity Marketers, the August 2, 2001 Redactions will not be shown to, shared with, or disseminated in any manner to such divisions or affiliated companies that are Electricity Marketers. Except for its use in Case No. PUE010300 and without limiting the generality of the foregoing, such August 2, 2001 Redactions shall not be used by the recipient, in any manner, to gain an advantage over the producing party or for any other purpose in litigation, negotiation, competition or consultation.

(3) Henry County Power should clearly label the August 2, 2001 Redactions and list it as an attachment to the nondisclosure agreement.

(4) Henry County Power shall immediately provide the requesting party with a log specifying the following about the information withheld: (i) the original requesting party; (ii) the data request number and date of the request; (iii) the type of information (e.g., computer-stored information, microfilm, letter, memorandum, policy circular, minute book, telegram, chart, etc.) or some other means of identifying it; (iv) its present location and custodian; and (v) the nature of the information; and (vi) the basis for the claim that the information is competitively sensitive. The obligations imposed by this paragraph shall be in addition to Henry County Power's obligation to make specific objections to a data request that seeks access to the August 2, 2001 Redactions.

(5) The Clerk of the Commission is directed to maintain under seal the August 2, 2001 Redactions filed with the Commission.

(6) In the event Staff or parties seek to introduce testimony, exhibits, or studies that disclose the August 2, 2001 Redactions, the Staff or the party seeking such introduction shall:

- (a) Notify Henry County Power at least three (3) days in advance of any hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice Henry County Power.
- (b) If such testimony is prefiled, file such testimony, exhibits or studies under seal and also file copies deleting those parts that contain references to or portions of the August 2, 2001 Redactions. The testimony, exhibits, or studies containing the August 2, 2001 Redactions shall be kept under seal unless or until the Commission or Examiner rules to the contrary. Each party shall, upon signing an appropriate nondisclosure agreement, receive a copy of those parts of the testimony, exhibits, or studies that contain references to or portions of the August 2, 2001 Redactions and each party and counsel shall be bound by this Ruling insofar as it restricts the use of and granting of access to the August 2, 2001 Redactions. That

portion of the transcript recording such testimony shall be placed in the record under seal.

(7) Oral testimony regarding the August 2, 2001 Redactions, if ruled admissible, will be taken *in camera* and that portion of the transcript recording such testimony shall be placed in the record under seal.

(8) No person authorized under this Protective Ruling to have access to the August 2, 2001 Redactions shall disseminate, communicate, or reveal any of such August 2, 2001 Redactions to any person not specifically authorized under this Protective Ruling to have access to such August 2, 2001 Redactions.

(9) At the conclusion of this proceeding (including any appeals), any originals or reproductions of the August 2, 2001 Redactions produced pursuant to this Ruling shall be returned by the requesting Party to Henry County Power (or destroyed) if requested to do so by Henry County Power. At such time, any originals or reproductions of August 2, 2001 Redactions in Staff's possession will be returned to Henry County Power, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the August 2, 2001 Redactions. Insofar as the provisions of this Protective Ruling restrict the communications and use of the August 2, 2001 Redactions produced hereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the August 2, 2001 Redactions.

(10) Henry County Power is obligated to separate non-confidential documents, materials, and information from the August 2, 2001 Redactions wherever practicable, and to provide the non-confidential documents, materials, and information forthwith.

Howard P. Anderson, Jr.
Hearing Examiner